

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 12)
and 19 of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Development of Competition)
and Diversity in Video)
Programming Distribution)
and Carriage)

MM Docket No. 92-265

To: The Commission

**OPPOSITION OF
LIBERTY CABLE COMPANY, INC.
TO
PETITIONS FOR RECONSIDERATION**

Liberty Cable Company, Inc. ("Liberty"), pursuant to Section 1.429(f) of the Commission's Rules, by its attorneys, hereby submits its Opposition to certain portions of the Petitions for Reconsideration filed by Time Warner Entertainment Company, L.P. ("TWE") and Viacom International, Inc. ("Viacom") in the above-referenced proceeding.

1. TWE requests the Commission reconsider, inter alia, ¶¶ 11 and 30 of the First Report and Order (the "Order") in this proceeding,^{1/}. These paragraphs provide the basis for filing a complaint about discriminatory practices against a programming vendor. One such basis is that the vendor be vertically integrated with any cable operator. TWE would prefer that these paragraphs

^{1/}58 Fed. Reg. 27658 (May 11, 1993).

No. of Copies rec'd
List ABCDE

015

require that this basis be modified to provide that the vendor be vertically integrated only with the competing cable operator in the market where the complaint is filed.

2. Viacom requests the Commission to reconsider, inter alia, that portion of the Order, at ¶ 33, n.19, which provides that all vertically integrated program service be subject to § 628 of the Cable Act, the so-called "program access rule." Viacom urges an exemption from this provision for a vertically integrated program service if the subscribers of the cable system with which the programmer is vertically integrated represent fewer than 5% of the programmer's total subscribers.

3. Liberty is a satellite master antenna television ("SMATV") operator, also known as an alternative technology distributor of service in New York City. Liberty currently serves

Liberty actively participated in this proceeding at both the comment and reply comment stage. Liberty's comments and reply comments provided clear evidence that it, as an alternative technology distributor of video programming, had been discriminated

economic incentives. The Commission must enact its policies based on a long term view of the video marketplace.

5. As Liberty's experience has shown, vertically integrated program service providers are willing to forgo income in the short term if they can destroy competition and, eventually, dominate the marketplace. The fact that such vertically integrated program service providers are not actually competing in a market with the complaining alternative technology distributor does not matter. Such programming vendors still have an incentive to try to force alternative providers out of business to avoid potential competition in other markets where they may compete with such alternative providers either now or in the future. This motive grows even stronger as emerging technologies like Video Dialtone invite the first serious alternative technology overbuilding of

This is because the competitor is offering the other vertically integrated programmer's materials. As illustrated in the attached letter from Liberty to the Attorney General of the State of New York, TWE has mailed to its subscribers, and to buildings where Liberty seeks to compete, advertising materials asserting, inter alia, that TWE "carries many programming services not available with Liberty"

7. Viacom's proposed exemption for a vertically integrated programmer would also be lethal to alternative distributors. Liberty's treatment in New York^{6/} illustrates that even where a programmer is not affiliated with any subscriber base, discrimination against an alternative provider is present. This discrimination exists even though there is no short term economic incentive for such action. Accordingly, there is another incentive to act in a discriminatory manner -- predation.

8. Congress and the Commission have both recognized that vertically integrated cable programmers have engaged in discriminatory practices in a manner designed and intended to drive alternative technology distributors from the marketplace. Those provisions which TWE and Viacom seek to have reconsidered provide the type of regulation necessary to prevent such predatory practices. Erosion of the provisions as requested by TWE and Viacom will only serve to enhance vertically integrated programmers' ability to act in a discriminatory manner. Liberty

^{6/}See Liberty's Comments and Reply Comments filed in this proceeding.

submits that these are not the parties the Cable Act was intended to protect. Therefore, the requested relief must be denied.

WHEREFORE, the premises considered, Liberty respectfully submits that those portions of the Petitions for Reconsideration of TWE and Viacom as discussed herein, be denied.

Respectfully submitted,
LIBERTY CABLE COMPANY, INC.

By: 

Henry M. Rivera
Larry S. Solomon
GINSBURG, FELDMAN AND BRESS,
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-637-9000

ITS ATTORNEYS

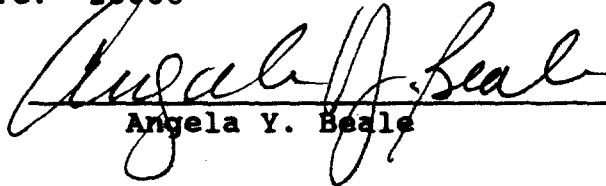
Dated: July 14, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition to Petitions For Reconsideration were served, this 14th day of July, 1993, by U.S. mail, first-class postage prepaid, upon the following:

Robert D. Joffe, Esquire
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Richard E. Wiley, Esquire
Lawrence W Seacrest, III, Esquire
Philip Permut, Esquire
Wayne D. Johnsen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006


Angela Y. Beale